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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,739	07/07/2003	Thomas L. DeFazio	ISR-PAT/CTR-ICON	6096
24390	7590	09/23/2004	EXAMINER	
LUCASH, GESMER & UPDEGROVE, LLP 40 BROAD ST SUITE 300 BOSTON, MA 02109			YEAGLEY, DANIEL S	
			ART UNIT	PAPER NUMBER
			3611	

DATE MAILED: 09/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/614,739

Applicant(s)

DEFAZIO ET AL. 

Examiner

Daniel Yeagley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32,39-41,43,45-48,50-52 and 54-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32,39-41,43,45-48,50-52 and 54-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/21/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Applicant's election without traverse of species II is acknowledged.

Applicant should note that no amended drawings were found as indicated in the preliminary Amendment filed 7/7/03.

Specification

2. The disclosure is objected to because of the following informalities:

In the amended first sentence of the specification following the title, with regards to the reference of the prior application 09/194,209 should also include the filing date of the prior application, such as; --filed 4/4/2001-- and the current status of any such prior applications, such as; --"now patent number 6,662,889; issued 12/16/2003--.

Appropriate correction is required.

3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 39 – 41 and 54 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 39 – 41, the term “the articulation element” lacks antecedent basis because no such articulation element was disclosed in its preceding claim.

Regarding claim 54, the phrase “each wheel element” lacks antecedent basis because it is unclear if applicant is trying to claim each set of wheel elements has a defined radius or if applicant is trying to claim distinct elements within each wheel element set each have a defined radius which were not defined in its preceding claim.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 32, 39 – 41, 43, 48 and 50 – 56 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown et al ‘839.

Brown shows a wheeled structure (figure 1) having a body 11 with side portions and first and second wheel sets rotatably attached to the side portions, which further shows, a tail element 66 pivotally coupled to a portion of the body which provides support when the wheeled structure transverses an inclined terrain such as when ascending or descending stairs, wherein a drive module 71 is coupled to the tail element to controls the movement of the tail element between a first stowed position (dashed lines figure 1) and a second position which makes selective contact with a ground plane (stairs), wherein as best understood; each wheel element 41 of the first and second set of wheel elements has a defined radius such that there is no overlap between adjacent

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wheel element 17 of the first and second set of wheel elements and are aligned in a row as broadly claimed, wherein the first and second set of wheel elements includes at least a first wheel element 41a, a second wheel element 41b and an intermediate wheel element 41 which is contacts the ground with the first and second wheel elements being selectively in contact with the ground (column 2, line 57-60), and wherein as best understood; the articulation element is a pivot/hinge being a flexible body portion (element 72,73), wherein the first and second set of wheel elements appear to be smooth and are arrayed with a selected degree of rocker (wheel elements 41, 41a and 41b, column 2).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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10. Claims 45 – 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al '839 in view of Wilhelm '076.

Brown disclosed a wheeled structure having wheel sets comprising wheel elements disposed in a row shown being substantially smooth but failed to show at least one wheel element being comprised of raised blocks spaced apart circumferentially, studded or scalloped.

Wilhelm shows the prior art of utilizing a scalloped raised block studded wheel element on a wheeled structure.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the wheel elements of Brown wheeled structure with alternative wheels elements having studded or scalloped raised wheel elements for better traction as is well known in the art which are provided with a special profile on the tread of the wheel element which protrudes over the rest of the profile in order to form the tread which has the advantage of very low rolling resistance, can be easily held and has an increased service life in comparison with other tires which is further particularly suitable for coping with curbs or the like as suggested by Wilhelm.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Woodworth '981, Carstens '642, Feliz '551, Rembos '941, Littlejohn et al '495, Davidson '950, Tiffin et al '369 and Toselli '030 show various wheeled structures having first and second sets of wheel elements which include a tail element which can selectively make contact with a ground plane.

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12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Yeagley whose telephone number is 703-305-0838. The examiner can normally be reached on Mon. - Fri; first Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley D Morris can be reached on 703-308-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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